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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,533	07/29/2003	Joachim Nuetzel	FIS920020132US1	1532
29371	7590	06/03/2005	EXAMINER	
CANTOR COLBURN LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			MITCHELL, JAMES M	
			ART UNIT	PAPER NUMBER
			2813	

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,533

Applicant(s)

NUETZEL ET AL.

Examiner

James M. Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the amendment filed February 28, 2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 and 6-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ning et al. (U.S. 2002/0098676).

4. Ning (Fig. 3-5; Par.0026-0027) discloses:

(cl. 1, 10) a device and method for forming an interconnect structure in a magnetic random access memory (MRAM) device, the method comprising defining magnetic stack layer (218) on a lower metallization level (210), said magnetic stack layer including a non-ferromagnetic layer (216) disposed between a pair of ferromagnetic layers (218): defining a conductive hard mask (244) over said magnetic stack layer; and removing selected portions of said hardmask and said magnetic stack layer (Fig. 4-5), thereby creating an array (250) of magnetic tunnel junction stacks, MJT (Fig. 5), said stacks including remaining portions of said magnetic stack layer and said hardmask, wherein said hardmask forms a self-align contact between said magnetic stack layer and an upper metallization level (252) subsequently formed above said MTH stacks;

(cl. 2, 3, 8, 11) depositing a cap layer (240) over said MTJ stacks and exposed portions or said lower-metallization level; depositing an interlevel dielectric (ILD) layer (220) over

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said cap layer; and defining /via openings (250) for said upper metallization level in said ILD layer; wherein portions of said cap layer atop said MTJ stacks are used as an etch stop (Par. 0027);

(cl. 4, 9,13) removing portions of said cap layer (Fig. 5) exposed by said upper metallization openings and said via openings; and filling said upper metallization openings and said via openings with a conductive material (252) by dual damascene (Par. 0042);

(cl. 12) wherein there is a plurality via openings (Fig. 5);

(cl. 5, 14) wherein said hardmask comprises a conductive material selected from the group of: tantalum, tungsten, titanium, tantalum nitride, tungsten nitride, titanium nitride and combinations comprising at least one of the foregoing (Par. 0027).

5. With respect to process limitation in claims 10-15, such as “created by removal of hard mask,” the product in the product-by-process claim is the same as a product of the prior art. As such, “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Claim Rejections - 35 USC § 103

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ning et al. U.S. 2002/0098676).

8. Ning discloses the elements stated in paragraphs 4 and 5 of this office action and further disclosed that its hard mask may be of other materials (Par. 0027, 0031).

9. Ning does not expressly disclose the use of silicon nitride as its hardmask; however, use of silicon nitride would have been obvious since it has been held that to be within the general skill of a worker in the art to select known material on the basis of its suitability for intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

Response to Arguments

10. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Mitchell whose telephone number is (571) 272-1931. The examiner can normally be reached on M-F 8:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead Jr. can be reached on (571) 272-1702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jmm
May 30, 2005


CARL WHITEHEAD, JR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800